Supreme Court, U.S.
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CASE NO. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

J.J. MILLER-WAGENKNECHT
Petitioner,
V.
COMMISSIONER OF INTERNAL REVENUE
Respondent.

On Petition For Writ Of Certiorari
To the UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Internal Revenue Service is required to establish that a Citizen of Pennsylvania is a "person " "liable" for an income tax pursuant to the Internal Revenue Code before the Internal Revenue Service can claim jurisdiction.

II. Whether 44 USC 3512 applies as a complete bar, defense, or otherwise when the Internal Revenue Service requires that a "person" "liable" for an alleged tax complete and file a Form which the OMB has not authorized to be used for the specific statute or regulation that the Internal Revenue Service alleges makes the "person" "liable" for the alleged tax.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2008

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Petitioner, J.J. Miller-Wagenknecht, respectfully petitions for a writ of certiorari to review judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The September 25, 2008 Entry of the United States Court Of Appeals For The Third Circuit provided in Appendix A at page 19.

The July 22, 2008 Opinion Entry of the United States Court Of Appeals For The Third Circuit provided in Appendix B at page 21.

The July 22, 2008 Judgment Entry of the United States Court Of Appeals For The Third Circuit provided in Appendix C at page 29.

JURISDICTION

The Judgment of the Decision and Journal Entry for The United States Court Of Appeals For The Third Circuit was entered July 22, 2008. The Opinion was entered on July 15, 2008. A timely Petition For Panel Rehearing was denied on September 25, 2008.

This petition is timely filed within ninety days of that date, per Rule 13(1) &13(3), Rules of the Supreme Court of the United States.

CONSTITUTIONAL PROVISIONS

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATUTUES

44 USC §3512 Public Protection states:

(a) Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if---

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto

STATEMENT OF THE CASE

Petitioner filed for tax years 2003 and 2004 a separate **Return/AFFIDAVIT STATEMENT** pursuant to 26 USC 6011 for each of the before mentioned tax periods. Each **Return/AFFIDAVIT STATEMENT** was received and accepted by Mark W. Everson, Commissioner of Internal Revenue. (A000207-303) On or about June 22, 2006 petitioner received from the Department of the Treasury, Internal Revenue Service pursuant to a Freedom of Information Act (FOIA) request the IRS record for J.J. Miller-Wagenknecht titled IMF MCC TRANSCRIPT-SPECIFIC. The IRS posted in petitioner's IMF MFR-01 for tax years 2003 and 2004 which according to IRS Document 6209 is defined as not required to file a return which includes Form 1040. (A000047-000058) In addition, the IRS failed to post transaction Code 494 for tax years 2003 and 2004 which according to IRS Document 6209 is defined as identifying the posting of a Statutory Notice of Deficiency.

On or about January 10, 2007 a "Notice of Deficiency" for 2003 and 2004 was mailed to petitioner. The "Notice of Deficiency" did not comply with procedural requirements as delineated in documents and/or publications which include but is not limited to the Internal Revenue Code, Code of Federal Regulations, Internal Revenue Manual, IRS publication, and case law.

On or about March 21, 2007 petitioner received from the Department of the Treasury, Internal Revenue Service pursuant to a Freedom of Information Act (FOIA) request the IRS record for J.J. Miller-Wagenknecht titled IMF MCC TRANSCRIPT-COMPLETE prepared on March 16, 2007. The IRS still had posted in petitioner's IMF MFR-01 for tax years 2003 and 2004 which according to IRS Document 6209 is defined as not required to file a return which includes Form 1040.

In addition, the IRS still had not posted Transaction Code 494 for tax years 2003 and 2004 which according to IRS Document 6209 is defined as identifying the posting of a Statutory Notice of Deficiency. Furthermore, the FOIA request included ACCOUNT TRANSCRIPT(s) for the years 2003 and 2004 that listed the balance owed for each year as zero(0.00). (A000309-000310)

Petitioner's original petition was timely filed on April 12, 2007 in the United States Tax Court and docketed as Case No: 8347-07. On May 30, 2007 respondent filed a Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted. The Tax Court issued on June 14, 2007 an Order allowing for petitioner to file an objection to respondent's Motion and file an amended petition. The Order scheduled a hearing for July 18, 2007. In lieu of attending the hearing to take place in Washington D.C, petitioner filed a statement pursuant to Rule 50(C). Petitioner filed a Response to the motion to dismiss and filed an Amended Petition. The hearing was held as

scheduled on July 18, 2007. On September 14, 2007 the Tax Court issued the ORDER OF DISMISSAL AND DECISION to grant respondent's motion. Petitioner timely filed the Motion To Vacate which was denied. Petitioner then timely filed the Notice of Appeal with the United States Court Of Appeals for the Third Circuit. On July 22, 2008 the United States Court of Appeals for the Third Circuit affirmed the order of the United States Tax Court dismissing the case. The United States Court Of Appeals For The Third Circuit's Opinion was entered on July 15, 2008. A timely Petition For Panel Rehearing was denied on September 25, 2008.

This petition for writ of certiorari is timely filed pursuant Rule 13(1) &13(3) of the Rules of the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT

United States Tax Court proceedings have provided the forum for Judges and Attorneys representing the Commissioner of Internal Revenue to openly admit on the record that people are not required to file Form 1040.[1] Yet, through

[1] Attorney Katherine Kosar, counsel for the Commissioner of Internal Revenue, admitted at trial that Carl Wagenknecht who was an Asst. Principal with the Akron Public Schools in Ohio was not required to file Form 1040 . See Trial Transcript Docket No: 8293-07 p. 9 ll 19-20 Also, Judge Juan F. Vasquez acknowledged that circumstances exist where people are not required to use Form 1040. id. P. 21 ll 11-12

fear and intimidation the Internal Revenue Service perpetuates the myth that all people are required to file Form 1040.

Yearly the Internal Revenue Service sends notice to the people of the United States of America that the U.S. Federal Income Tax is a system of voluntary assessment and voluntary compliance despite the common mistaken belief fostered by deceptive advertising promulgated by the IRS falsely alleging to the effect, in substance, that every person in the private sector in the United States of America must pay U.S. Federal Income Tax as a requirement of law.

The IRS makes every effort to encourage unnecessary voluntary assessment and voluntary compliance by supplying millions of copies of IRS Forms (i.e. Form 1040) and Instruction Booklets to people who are not liable to make and deliver such forms or pay any U.S. Federal Income Tax, while obscuring and suppressing the information that would cause such people to understand that they are not liable for said tax.

Just like petitioner the majority of people of the United Sates of America would find posted in their Individual Master File (IMF) MFR-01 which means that you are not required to file which includes Form 1040. Petitioner's alleged federal tax liability, just like the majority of Americans' alleged federal tax liability, is based upon the unsubstantiated legal argument that it is mandatory that all people (i.e. petitioner) are required to file Form 1040. People who are required

to file Form 1040 are "persons" "liable" for a specific tax pursuant to the Internal Revenue Code and as result would not have MFR-01 in their IMF.

Now is the time for the United States Supreme Court to provide guidance. This case is timely and provides the rare opportunity to provide that guidance. There is not one segment of America that does not agree that the IRS is out of control, trampling on the rights of the Citizens of the United States of America. United States Senators, United States Representatives, the Executive Branch, politicians, and every day Citizens cry for reform of the IRS.

The Courts and the legal establishment are the means that perpetuate this fraud on America. As in this case, a Court will manipulate the facts and court decisions to provide the appearance that their ruling has a valid legal basis. What often results are Courts with conflicting holdings. Such is the situation in this case.

The United States Court Of Appeals for the Third Circuit decision in this case is in conflict with : (1) the decision of the United States Court of Appeals for the Tenth Circuit in *United States of America v. Chisum*, Case: 06-7082, Document: 010138646 (10th Cir. Sept. 25, 2007). (2) the decision of the United States Court Of Appeals for the Second Circuit in *Botta v. Scanlon*, 288 F.2d 504 (1961). (3) the decision in the United States Court of Appeals for the Sixth Circuit *the United States of America v. Hindenlang*, 164 F.3d 1029 (6th Cir. 1999), and (4) the United States Court of

Appeals for the Fourth Circuit in *United States v. Taylor* 305 F.2d 183 (1962).

The United States Court Of Appeals for the Third Circuit in upholding the United States Tax Court decision which is the subject of this writ had to hold that the calculations and computations of an IRS Agent established that petitioner had a federal tax liability. But this is in direct conflict with the holding in *United States v. Taylor* 305 F.2d183, 184 (1962) which held "mere computations of a revenue agent do not legally determine one's tax liability."

The Appeals Court declared that "it appears that Miller-Wagenknecht never filed Form 1040 federal income tax returns for 2003 and 2004 tax years." The Appeals Court proceeded as if they had established that petitioner was a "person" "liable" for an income tax pursuant to the Internal Revenue Code and thereby petitioner was required to file Form 1040. But this unsubstantiated presumptive leap to a legal conclusion is in direct conflict with the holding in *Botta v. Scanlon*, 288 F.2d 504, 508 (1961), that held:

> "...[A] reasonable construction of the taxing statutes does not include vesting any tax official with the absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status before the application of "taxpayer" is bestowed upon them...."

Also, the Appeals Court held that 44 USC 3512 is a frivolous argument which is in direct conflict with *United States of America v. Chisum*, Case: 06-7082, Document: 010138646 (10th Cir. Sept. 25, 2007). The Appeals Court holding makes 44 USC 3512 impotent and meaningless.

In addition, the Appeals Court holding that "Her [petitioner] "Notices of Affidavits" failed to provide the financial information required to calculate her tax liabilities for 2003 and 2004" is in Conflict with *United States of America v. Hindenlang*, 164 F.3d 1029 (6th Cir. 1999). The Appeals Court in *United States of America v. Hindenlang*, 164 F.3d 1029, 1033 (6th Cir. 1999) held that "the Internal Revenue Code does not specifically set out how accurate, thorough, or complete the requisite form must be in order to qualify as a return under the many sections of the Internal Revenue Code".

I.

Whether the Internal Revenue Service is required to establish that a Citizen of Pennsylvania is a "person" "liable" for an income tax pursuant to the Internal Revenue Code before the Internal Revenue Service can claim jurisdiction.

26 USC 7701 (a) (14) states that the term "taxpayer" means any "person" subject to any

internal revenue tax. However, a "person" must be "liable" for a tax before a "person" is classified as a "tax payer". Furthermore, the Appeals Court in *United States v. Taylor* 305 F.2d 183, 184 (1962) held that "mere computations of a revenue agent do not legally determine one's tax liability." Specifically, the Appeals Court in *Botta v. Scanlon,* 288 F.2d 504, 508 (1961), held that :

> "...[A] reasonable construction of the taxing statutes does not include vesting any tax official with the absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status before the application of "taxpayer" is bestowed upon them...."

However the Appeals Court in this case held the opposite of the holdings in the *Botta* Case, supra and the *Taylor* Case supra, The Appeals Court in affirming the Tax Court decision stated axiomatically and not subject to dispute that petitioner is classified as a "person" "liable" for an alleged income tax without requiring respondent to establish that petitioner is a "person" "liable" for a tax as identified for a specific statute and furthermore held that the Commissioner of Internal Revenue can merely rely on an Revenue Agent's calculation to establish an alleged federal tax liability.

The Appeals Court's Opinion is predicated on the unsubstantiated presumptive leap that petitioner is a "person" "liable" for an alleged income tax pursuant to the Internal Revenue Code. The Appeals Court held that :

> "Simply put, the Internal Revenue Code imposes an income tax on the taxable income of all citizens or residents of the United States. It cannot be seriously disputed that Miller-Wagenknecht, who was evidently born in Ohio and currently resides in Pennsylvania, is a citizen and resident of the United States for federal income tax purposes." Page 6 of Opinion

The Internal Revenue Service is never required to: (1) prove that the individual is a "person" "liable" for an alleged income tax pursuant to the Internal Revenue Code; (2) prove the allegation that an argument made by an individual is frivolous or without merit; (3) prove and establish what statute specifically identifies the individual as a "person" "liable" for an alleged tax pursuant to the Internal Revenue Code; and (4) prove that an individual is required to complete and file Form 1040 .

But this is precisely how the Internal Revenue Service operates, declare an individual is a "person" "liable" for an alleged income tax pursuant to the Internal Revenue Code without supporting facts or documentation and proceed as if

the jurisdiction is established over the individual. Then if the individual tries to dispute the Internal Revenue Service's allegation, the Internal Revenue Service declares without proof that the individuals arguments are frivolous and without merit. Then to insure a court is inflamed and bias declares that the arguments are "tax protest-type arguments".

Hence, the Internal Revenue Service is allowed to usurp constitutional rights reserved to the people and several States pursuant to the Tenth Amendment which includes but is not limited to establishing jurisdiction. Also, the Internal Revenue Service is permitted to trample the rights of Citizens pursuant to the Fifth Amendment which includes but is not limited to due process of law.

The United States Supreme Court must hold the Internal Revenue Service accountable to the Citizens of the United States of America and that the Internal Revenue Service is not only required but it is mandatory that an allegation made by the Internal Revenue Service regarding a federal tax liability must be established with supporting documentation and with the specific statute alleging the tax liability. And further; to allow an individual an opportunity to challenge such allegation before the Internal Revenue Service can take any action.

II.

Whether 44 USC 3512 applies as a complete bar, defense, or otherwise when the Internal Revenue Service requires that a "person" "liable" for an alleged tax complete and file a Form which the OMB has not authorized to be used for the specific statute or regulation that the Internal Revenue Service alleges makes the "person" "liable" for the alleged tax.

The IRS alleges that individuals are made liable for an income tax pursuant to 26 USC 1 with implementing regulations at 26 CFR 1.1. 26 CFR 1.1-1 is titled "Income Tax on individuals".

The Paper Reduction Act requires a valid OMB number to be displayed on a form before an individual is required to complete it. 26 CFR 602.101 states in pertinent part as its purpose:

> "This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget(OMB) under the Paper Reduction Act of 1980. The Internal Revenue Service intends that this part comply with the requirements of [sections] 1320.7(f), 1320.12, 1320.13 and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paper Reduction Act), for the display of control

numbers assigned by OMB to collections of information in Internal Revenue Service regulations"

Unless an information gathering form (Form 1040) has been presented by the Agency (IRS) to the Office of Management and Budget (OMB) for approval and subsequent assignment of the control number identifying the form, and then the form is published in the Federal Register pursuant to the Federal Register Act and the Administrative Procedures Act, there is no obligation on the part of the general public to fill it out. *United States v. Two Hundred Thousand Dollars ($200,000) In United States Currency*, 590 F. Supp 866 (S.D. Fla. 1984); *Gonzalez v. Freeman*, 334 F.2d 570 (D.C. Cir. 1964); *Hotch v. United States*, 212 F. 2d 280 (9th Cir.1954); *Berends v. Butz* 357 F. Supp 144 (D. Minn. 1973)

Furthermore, pursuant to 44 USC 3512 a person can bring forward that a collection of information form (Form 1040) does not display a valid OMB number assigned by the Director as a complete defense, bar, or otherwise at any time during the administrative process or judicial action applicable. United States Court of Appeals for the Tenth Circuit rendered its decision in *United States of America v. Chisum*, Case: 06-7082, Document: 010138646 (10th Cir. Sept. 25, 2007). *See Dole v. United States Steelworkers of Am.*, 494 U.S. 26, 33 (1990).

According to 26 USC 6011 the Secretary should have identified a specific form and regulation so that any individual alleged liable for a tax could prepare a return for the alleged tax. When petitioner searched 26 CFR 602.101 where the list of valid OMB control numbers assigned to forms is located, there was no valid OMB number assigned for 26 CFR 1.1. There is an entry for 26 CFR 1.1(h)-1(e) but this applies to "Capital Gains look-through rule for sales or exchanges of interests in a partnership, S corporation, or trust". In fact the IRS has never requested that Form 1040 be used by those alleged to have a tax liability pursuant to 26 CFR 1.1.

Petitioner does not dispute the number 1545-0074 appears on Form 1040. Nor does petitioner dispute the fact that 26 CFR 602.101 list the valid OMB control numbers assigned to forms. Nor does petitioner dispute the fact that there are many forms listed in 26 CFR 602.101 that have the number 1545-0074. However, Form 1040 is not assigned to 26 CFR 1.1. Furthermore, 26 CFR 1.1 has no form assigned to it that is required or mandatory to file!

Hence, the OMB Number assigned to Form 1040 is not a valid OMB Number assigned to said form that is valid for use for an alleged federal tax liability pursuant to 26 CFR 1.1. Therefore, 44 USC 3512 is a complete bar and defense as to the alleged requirement that petitioner is required to file Form 1040.

Since there was no form assigned to file for 26 CFR 1.1 and petitioner desired to be in compliance with applicable law, petitioner sought to prepare a return/statement that complied with 26 USC 6011. However, the Internal Revenue Code, which liberally uses the concept of returns, does not formally define "return". *In re Hindenlang*, 164 F.3d 1029,1033 (6th Cir. 1999). Case law provides the requirements for a document to be considered a valid return.

The Appeals Court *In re Payne*, 430 F.3d 1055, 1057 (7th Cir. 2005) held that for a document filed with the IRS to be deemed a return, the document must (1) purport to be a return (2) be signed under penalty of perjury (3) contain enough information to enable the taxpayer's tax liability to be calculated and (4) an honest and reasonable endeavor to satisfy the law. (*See Watson v. Commissioner of Internal Revenue* T.C. Memo. 2007-146 (2007).

In addition, the Appeals Court in *United States of America v. Hindenlang*, 164 F.3d 1029,1033 (6th Cir. 1999) held that " the Internal Revenue Code does not specifically set out how accurate, thorough, or complete the requisite form must be in order to qualify as a return under the many sections of the Code".

If as the Internal Revenue Service contends that Form 1040 is mandatory to file then why does case law exist that provides the requirements for a return to be filed in lieu of Form 1040 to be in compliance? Furthermore, why does both the

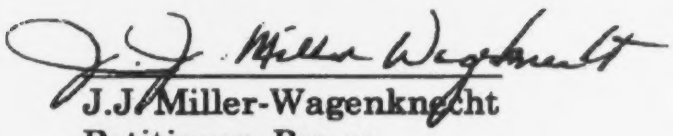
United States Code and case law demand that it must be established that a "person" is "liable" for an income tax pursuant to the Internal Revenue Code before one is classified as a "taxpayer" and therefore required to file Form 1040? And further, why does 44 USC 3512 exist as a complete bar and defense to insure that only a "person" "liable" to file Form 1040 does?

The answer is simple. Form 1040 is not required to be filed nor is it mandatory to be filed by Citizens such as petitioner.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted



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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-4714

J.J. MILLER-WAGENKNECHT,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(Tax Court No. 8347-07)
Tax Court Judge: Honorable Lewis R. Carluzzo

Present: AMBRO, FUENTES and FISHER, *Circuit Judges*

SUR PETITION FOR PANEL REHEARING

The Petition for panel rehearing by Appellant having been submitted to all judges who participated in the decision of this court, and a majority of the judges who concurred in the decision not having asked for a rehearing, it is hereby ORDERED that the petition for panel rehearing is hereby DENIED.

BY THE COURT

/s/ D. Michael Fisher
Circuit Judge

Dated: September 25, 2008
CLW/cc: Mr. J.J. Miller-Wagenknecht
Robert L. Barker, Esq.
Steven W. Parks, Esq.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-4714

J.J. MILLER-WAGENKNECHT,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(Tax Court No. 8347-07)
Tax Court Judge: Honorable Lewis R. Carluzzo

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 15, 2008

Before: AMBRO, FUENTES and FISHER, Circuit Judges

(Filed: July 22, 2008)

OPINION

PER CURIAM

J.J. Miller-Wagenknecht appeals, pro se, from the order of the United States Tax Court dismissing her case. We will affirm.

It appears undisputed that Miller-Wagenknecht never filed Form 1040 federal income tax returns for the 2003 and 2004 tax years. Instead, she submitted to the Commissioner of Internal Revenue documents for the respective years entitled "Notice of Affidavit of: J-.J. Miller-Wagenknecht In Protest of Internal Revenue Code Section 6011." Miller-Wagenknecht claimed "zero" tax liabilities for both years based on, among other things, the notion that she was not subject to federal income taxation.

During 2003 and 2004, Miller-Wagenknecht respectively received self-employment income in the amounts of $89,204 and $79,233, wages of $1,504 and $1,480 from an insurance company, and taxable Social Security benefits of $14,787 and $15, 096. The Commissioner accordingly issued a notice

of deficiency determining that she owed federal income taxes as well as penalties for failure to file tax returns and to pay estimated taxes.[1]

Miller-Wagenknecht then filed a petition in the Tax Court alleging, inter alia, that the Commissioner's determinations were erroneous because no "valid original return" was filed or appeared on the IRS's computer records (A000020-A000021). The Commissioner moved to dismiss the case for failure to state a claim upon which relief could be granted. The Tax Court ordered Miller-Wagenknecht to file an amended petition containing allegations of error and statements of fact required by the Tax Court Rule 34. She accordingly filed an amended petition containing additional claims and allegations. The Tax Court, however, granted the Commissioner's motion and dismissed the case. It was "satisfied that the amended petition fails to raise any justiciable issue either with respect to the deficiencies or the additions to tax." (A000003.) It is further concluded that her failure to file income taxes returns did not preclude the Commissioner from making the deficiency determinations.

---

[1] According to the notice of deficiency, Miller-Wagenknecht owed the following amounts: (1) income taxes of $33,481 for2003 and $29,211 for 2004; (2) penalties of $8,370.25 for 2003 and $7,302.75 for 2004 on account of her failure to file tax returns; and (3) penalties of $876.21 for 2003 and $847.90 for 2004 for 2004 for failing to pay estimated taxes. The Commissioner also assessed additional penalties for failure to pay under I.R.C. § 6651(a)(2).

Miller-Wagenknecht filed a motion to vacate, which the Tax Court denied. She then filed a timely notice of appeal.[2]

II.

Especially given the rigorous pleading requirements of Tax Court Rule 34, the Tax Court properly dismissed the petition because of Miller-Wagenknecht's failure to state any claim upon which relief could be granted. She has not raised, either before the Tax Court or in this present appeal, any serious dispute as to either her receipt of unreported income in the amounts stated by the Commissioner or her failure to file the necessary federal income tax returns and pay the federal taxes due. In the words of the Commissioner's appellate brief, "her only comprehensible challenges to the Commissioner's determination [before the Tax Court] consisted of broad, conclusory denials of liability and frivolous, tax protest-type arguments." (Appellee's Br. at 12.) We likewise reject the arguments raised by Miller-Wagenknecht on appeal because they are without merit.

---

[2] We have jurisdiction over this Tax Court appeal pursuant to I.R.C.§ 7482(a)(1). We exercise plenary review over the Tax Court's conclusions of law and review its factual findings for clear error. See, e.g., PNC Bancorp, Inc. v. Comm'r, 212 F.3d. 822, 827 (3d Cir. 2000)

Among her numerous contentions, Miller-Wagenknecht appears to argue that the Form 1040 tax returns for 2003 and 2004 did not comply with the requirements of the Paperwork Reduction Act ("PRA"), see 44 U.S.C.§ 3501-31. She actually admits that the form included an Office of Management and Budget ("OMB") control number. In turn, Treasury Regulations §602.101 expressly lists this particular number among many others "assigned to collections of information [IRS] regulations by the [OMB] under the [PRA]." 26 C.F.R.§602.101(a). Accordingly, it is well established that the Form 1040 satisfies the requirements of the PRA. See, e.g. United States v. Patridge, 507 F.3d 1092, 1095 (7th Cir. 2007), cert. denied, 128 S.Ct. 1721 (2008); United States v. Dawes, 951 F.2d 1189, 1193 (10th Cir. 1991). In any case, any alleged noncompliance with the PRA paperwork requirements would not preclude the Commissioner from assessing federal income tax liability and enforcing the statutory obligations requiring taxpayers to file federal income tax returns. See, e.g. Patridge, 507 F.3d at 1095, United States v. Hicks, 947 F.2d 1356, 1359-60 (9th Cir. 1991)

Miller-Wagenknecht further argues that she did in fact file federal income tax returns for 2003 and 2004. Specifically, she points to the self-styled "Notice of Affidavit" documents she sent to the Commissioner. According to the Seventh Circuit decision cited in her opening and reply briefs, "[t]he cases hold that to be deemed a return, a document

filed with the IRS must (1) purport to be a 'return,' (2) be signed under penalty of perjury, (3) contain enough information to enable the taxpayer's tax liability to be calculated, and (4) 'evince [ ] an honest and genuine endeavor to satisfy the law." In re Payne 431 F.3d 1055, 1057 (7th Cir. 2005) (quoting Zellerbach Paper Co. v. Helvering 293 U.S. 172 , 180 (1934) United States v. Moore, 627 F.2d 830, 834-35 (7th Cir. 1980)).

Miller-Wagenknecht's submissions to the IRS did not satisfy either the third or the fourth requirements. Her " Notices of Affidavits" failed to provide the financial information required to calculate her tax liabilities for 2003 and 2004. See e.g. United States v. Edelson, 604 F.2d 232, 234 (3rd Cir. 1979) (per curiam) ("[I]t is now well established that tax forms that do not contain financial information upon which a taxpayer's tax liability can be determined do not constitute returns within the meaning of the Internal Revenue Code." (citations omitted). They also did not represent a honest and reasonable attempt to satisfy her tax law requirements. Instead, the lengthy documents, each consisting of almost 50 single-spaced pages, constituted at best, legal briefs challenging the legality and applicability of the federal income tax. Her claims of "zero" tax liabilities were based, not on a real account of her financial circumstances, but on frivolous legal theories for why she was not personally subject to the federal income tax and why the Commissioner's enforcement of the Internal Revenue Code was

unconstitutional and illegal. The Commissioner in turn had no legal obligation to respond to her extensive and unsupported submissions. Accordingly, the Commissioner and the Tax Court properly determined the Miller-Wagenknecht failed to file federal income tax returns for the years at issue.

Finally, we have considered Miller-Wagenknecht's remaining arguments, and we conclude that they also are lacking in any conceivable merit. For instance, her argument that the IRS failed to establish its jurisdiction over her merely reiterated some of the frivolous "tax protest" theories presented in her "Notice of Affidavit.". Simply put, the Internal Revenue Code imposes an income tax on the taxable income of all citizens or residents of the United States. It cannot be seriously disputed that Miller-Wagenknecht, who was evidently born in Ohio and currently resides in Pennsylvania, is a citizen and resident of the United States for federal income tax purposes. See, e.g. Lonsdale v. United States, 919 F.2d 1440, "1447 & n.4, 1448 (10th Cir. 1990) (listing frivolous "tax protest" theories); Saures v. Comm'r, 771 F.2d 64, 66&n.2, 67, 68 n.6 (3d Cir. 1985) (same). We further reject her contention that the notice of deficiency was invalid on the grounds that it was not "signed" by the Commissioner under penalty of perjury . See, e.g. Urban v. Comm'r. 964 F.2d 888, 889-90 (9th Cir. 1992) (per curiam). Given her failure to file the requisite returns, the IRS also

properly prepared its own substitute tax returns for 2003 and 2004 pursuant to I.R. 6020(b)(1)

III

For the foregoing reasons, we conclude that the Tax Court properly dismissed the case for failure to state a claim. Accordingly, we will affirm.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-4714

J.J. MILLER-WAGENKNECHT,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

On Appeal from the United States Tax Court
(Tax Court No. 8347-07)
Tax Court Judge: Honorable Lewis R.Carluzzo

Submitted Pursuant to Third Circuit LAR 34.1(a)

July 15, 2008

Before: AMBRO, FUENTES and FISHER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States Tax Court and was submitted pursuant to Third Circuit LAR 34.1(a) on July 15, 2008. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the Tax Court entered on September 14, 2007, be and the same is hereby affirmed. Costs taxed against the Appellant. All of the above in accordance with the opinion of this Court.

ATTEST

Marcia M. Waldron
Clerk.

Dated: July 22, 2008

Supreme Court, U.S.
FILED

081142 DEC 22 2008

OFFICE OF THE CLERK

CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

J.J. MILLER-WAGENKNECHT
Petitioner,
V.
COMMISSIONER OF INTERNAL REVENUE
Respondent.

On Petition For Writ Of Certiorari
To the UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SUPPLEMENTAL APPENDIX

J.J. Miller-Wagenknecht
Petitioner, Pro Se
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Suite 199-105
Cranberry Township, Pennsylvania 16066
Telephone: 208-279-3638

APPENDIX D

UNITED STATES TAX COURT
Washington, D.C. 20217

J.J. MILLER-WAGENKNECHT,	)	
Petitioner,	)	
	)	Docket No:8347-07
v.	)	
COMMISSIONER OF INTERNAL REVENUE	)	
Respondent.	)	

ORDER OF DISMISSAL AND DECISISON

This case for the redetermination of a deficiency is before the Court on respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed May 30, 2007. In response to an Order dated June 14, 2007, petitioner submitted an objection to respondent's motion and an amended petition, both filed on July 9, 2007. A hearing was conducted on respondent's motion on July 18, 2007, in Washington, D.C. Counsel for respondent appeared and presented argument in support of the motion. In lieu of attendance at the hearing, petitioner submitted a

written statement, also filed on July 9, 2007. See Rule 50 (c)[1].

In a notice of deficiency dated January 10, 2007, respondent determined deficiencies in, and additions to petitioner's Federal income taxes as follows:

		Addition to Tax		
Year	Deficiency	Sec. 6651(a)(1)	Sec. 6651(a)(2)	Sec. 6654
2003	$33,481	$8,370.25	*	$876.21
2004	29,211	7,302.75	*	847.90

*This amount, which continues to accrue, will be determined as provided by statute.

The motion here under consideration was filed in response in response to allegations made in the petition. The petition has been superceded by the amended petition, which was filed after the motion. Consequently, we consider the merits of respondent's motion against the contents of the amended petition.

Nothing in the amended petition (or the petition for that matter) suggests that respondent

[1] Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov, Section references are to the Internal Code of 1986, as amended

erred with respect to any of adjustments made in the notice of deficiency. Instead petitioner, who did not file a Federal income tax return for either year in issue, alleges that his failure to do so somehow precludes respondent from determining the above-referenced deficiencies and additions to tax. Petitioner is simply mistaken on the point.

After giving petitioner every benefit of the doubt, we are satisfied that the amended petition fails to raise any justiciable issue either with respect to the deficiencies or the additions to tax. Consequently, respondent's motion to dismiss will be granted. Scherping v. Commissioner, 747 F.2d 478 (8th Cir, 1984); Funk v. Commissioner, 123 T.C. 213 (2004); Swain v. Commissioner, 118 T.C. 350 (2002); Rules 34 (a) (1) and 123 (b).

Premises considered, it is

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed May 30, 2007, is granted and this case is dismissed upon the stated ground. It is further

ORDERED and DECIDED that there are deficiencies in, and additions to petitioner's Federal income taxes as follows:

		Addition to Tax		
Year	Deficiency	Sec. 6651(a)(1)	Sec. 6651(a)(2)	Sec. 6654
2003	$33,481	$8,370.25	*	$876.21
2004	29,211	7,302.75	*	847.90

*This amount, which continues to accrue, will be determined as provided by statute.

/s/ Lewis R. Carluzzo
Lewis R. Carluzzo
Special Trial Judge

Entered: SEP 14, 2007